

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.6027 OF 2001

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, 1949, is filed by the petitioner to issue a writ of *Mandamus* by directing the respondent to regularize the services of the petitioner as Office Boy/Attender on and from the date of completion of 5 years service with time scale of pay as per the scheme formulated by the Government of A.P. *vide* G.O.Ms. No.212, dated 22.04.1994, without insisting for completion of 5 years of service as on 25.11.1993 and irrespective of availability of vacancy, with all consequential benefits.

The case of the petitioner, in brief, is that, on compulsory retirement of his father Khaja Shamsuddin Ahemad, on medical grounds due to his permanent disability, he was appointed as Office Boy/Attender on compassionate grounds *vide* proceedings No.1433/89E dated 23.05.1989 of the respondent, on temporary basis, on a consolidated pay of Rs.500/- p.m. with effect from 23.05.1989. Since then, the petitioner has been discharging his duties as such without any adverse remarks from his superior officers.

The main grievance of the petitioner is that, though he served for sufficiently long period, his services were not regularized extending regular pay-scale; thereupon, he submitted representations on 01.03.1994, 18.04.1994 and 04.12.1994 respectively requesting the respondent *i.e.*, the Karimnagar District Co-operative Marketing Society Limited (for short, 'the society') to consider genuine claim of regularization of his services on regular pay-scale but no order has been passed; therefore, failure of the respondent-society to regularize his services is illegal, arbitrary and discriminatory.

It is further contended that as per the law laid down by this Court i n ***D. Sesharani Vs. Managing Director, A.P. Women's Co-***

operative Finance Corporation^[1], the employees either daily wage or temporary or NMR, who had completed 5 years of service and employees appointed and continuing as such as on the cut-off date *i.e.*, 25.11.1993 as and when they complete 5 years of service, shall be regularized. In view of the proposition of law, the petitioner is entitled to regularization as he already put up more than 10 years of service by the date of filing the present petition and prayed to issue a direction to the respondent to regularize the services of the petitioner as Office Boy/Attender by extending regular pay scale from the date immediately after completion of his 5 years of continuous service.

None appeared for the respondent in spite of service of notice.

Learned counsel for the petitioner mainly contended that though the petitioner was appointed as Office Boy/Attender, on compassionate grounds due to medical disability of his father, and served for sufficiently long time, his services were not regularized despite issuance of G.O.Ms. No.212 by the Government of Andhra Pradesh and also relied on **District Collector Vs. M.L. Singh**^[2], in support of his contention and prayed to issue a direction to regularize the petitioner's services from the date when he completed 5 years of service by extending regular pay scale.

Admittedly, the petitioner was appointed as Office Boy/Attender on a consolidated pay of Rs.500/- p.m. with effect from 23.05.1989 *vide* proceedings No.1433/89E dated 23.05.1989, after compulsory retirement of his father Khaja Shamsuddin Ahemad, L.D.C., due to his permanent disability on medical grounds. This appointment of the petitioner as Office Boy on a minimum consolidated pay of Rs.500/- p.m. is not in dispute. The basis for claim of the petitioner is only issuance of G.O.Ms. No.212. As per G.O.Ms. No.212, the temporary employees or persons employed on daily wage/NMRs or on

consolidated pay who worked continuously for a minimum period of 5 years and are continuing as such on 25.11.1993 *i.e.*, on the date of commencement of the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994 (for short, 'the Act'), shall be regularized subject to fulfilling the following conditions laid down in G.O.Ms. No.212:

- “1. The persons appointed should possess the qualifications prescribed as per rules in force as on the date from which his/her services have to be regularized.
2. They should be within the age limits as on the date of appointment as NMR/Daily wage employee.
3. The rule of reservation wherever applicable will be followed and backlog will be set-off against future vacancies.
4. Sponsoring of candidates from Employment Exchange is relaxed.
5. Absorption shall be against clear vacancies of posts considered necessary to be continued as per work-load excluding the vacancies already notified to the Andhra Pradesh Public Service Commission/District Selection Committee.
6. In the case of work charged establishment, where there will be no clear vacancies, because of the fact that the expenditure on work charged is at a fixed percentage of P.S. charges and as soon as the work is over, the services of work charged establishment will have to be terminated, they shall be adjusted in the other departments, District Offices provided there are clear vacancies of Last Grade Service.”

As such the cut off-date *i.e.*, 25.11.1993 is fixed in the G.O. and the persons who are continuously serving for a period of 5 years prior to 25.11.1993 alone are entitled to be regularized subject to fulfilling the other conditions but here the petitioner joined in service on 06.05.1989 on a consolidated pay of Rs.500/-; as such he did not continuously serve for a minimum period of 5 years as on the cut-off date. Therefore, the petitioner is not entitled to avail the benefit under G.O.Ms. No.212.

Learned counsel for the petitioner mostly relied on the decision

of the Apex Court in ***M.L. Singh***², wherein the Apex Court held as follows:

“We have heard the learned Counsel for the parties. These matters relate to regularisation and payment of wages to the respondents who were employed on daily wage basis. By the impugned judgment, the Division Bench of the High Court, while affirming with modification the order passed by the learned Single Judge has directed that all employees who have completed five years of continuous service should be considered for regularization in accordance with the terms of G.O.Ms. No. 212, dated April 22, 1994 and that they should be paid their wages at par with the wages paid to the permanent employees of that category. As regards payment of wages there is no dispute between the parties that the same have to be paid from the date of regularization. Insofar as regularization is concerned, we are of the view that the High Court has rightly directed that on the basis of the Notification G.O. Ms. No. 212, the respondent employees shall be regularized with effect from the date or dates, they completed five years continuous service. It is however made clear that the other condition laid down in the said G.O.Ms. No. 212 will have to be satisfied for the purpose of regularisation. The special leave petitions are disposed of accordingly. No costs.”

In the above decision, the Apex Court had an occasion to decide the case of regularization of employees working on daily wage basis but they were not regularized though they fulfilled the requirements under G.O.Ms. No.212; however, the Apex Court affirmed the order of the High Court where the High Court directed the respondents therein to regularize the services of the employees as per the notification issued in G.O.Ms. No.212 with effect from the date or dates, they completed 5 years of continuous service.

The Apex Court in the above decision did not extend the benefit of G.O. to the employees who did not complete minimum 5 years of continuous service as on the cut-off date. Therefore, the above decision of the Apex Court has no direct application to the present facts of the case and, on the strength of the same, it is difficult to direct

the respondent herein to regularize the services of the petitioner since he did not fulfil the requirements more particularly, completion of 5 years of continuous service as on the cut-off date *i.e.*, 25.11.1993.

In ***D. Sesharani***^[1], this Court, as stated supra, also held that implementation of Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) (Amendment) Act, 1998 specifying the cut-off date as 19.08.1998 for regularization of persons working on daily wage basis or nominal muster roll or consolidated pay or as contingent worker on full time basis is contrary to fundamental rights and Directive Principles of State Policy and State Government was obliged to create posts for regularization of services of daily wagers *etc.*, from the date of completion of their 5 years of service. But the Division Bench of this Court, set-aside the order of the learned Single Judge by placing reliance on the decisions of the Apex Court in ***Bola Vs. B.D. Sardana***^[3], ***Gujarat Agricultural University Vs. Rathod Labhu Bechar***^[4] and ***Indra Sawhney Vs. Union of India***^[5] and also reversed the direction given by the learned Single Judge to the State Government for creation of posts for regularisation of the services of daily wagers *etc.*, but declared that the ban imposed on regularisation would be effective from the date of enforcement of Amendment Act No.27/1998 and all persons who have completed 5 years service as on the date implementation of Amendment Act No.27 of 1998 would be entitled to be considered for regularisation of their services; and, on the strength of the order of Division Bench of this Court, learned counsel for the petitioner contend that completion of 5 years of service subsequent to issuance of G.O.Ms. No.212 is sufficient to regularise the services of the employees and he further contended that the respondent cannot insist for completion of 5 years service of the petitioner as on the cut off date *i.e.*, 25.11.1993 and completion of the remaining service after issuance of G.O.Ms. No.212 is sufficient but

this contention cannot be accepted since policy of regularization contained in the first proviso to Section 7-A of the Act No.27 of 1993 is one time measure intended to benefit only those daily wage/NMR, temporary employees etc., who completed 5 years of continuous service on or before 25.11.1993 and the employees who have completed 5 years of service after 25.11.1993 cannot claim regularisation as a matter of right in view of the law declared by the Apex Court in ***A. Manjula Bhashini and others Vs. Managing Director, A.P. Women's Co-operative Finance corporation Limited and another***^[6], wherein the Apex Court considered the law laid down earlier in ***M.L. Singh***².

Even according to the conditions mentioned in the G.O.Ms. No.212, condition No.5 therein reads, absorption shall be against clear vacancies of posts considered necessary to be continued as per workload excluding the vacancies already notified to the Andhra Pradesh Public Service Commission/District Selection Committee. But, the petitioner requested this Court to direct the respondent to regularize his services irrespective of availability of vacancies, which is totally contrary to condition No.5 contained in G.O.Ms. No.212; hence, a direction in violation of condition No.5 cannot be issued. Since the minimum continuous service of 5 years is fixed as on the cut-off date, this Court cannot regularize the services of the petitioner while exercising power of judicial review under Article 226 of the Constitution and issue a direction to the respondent. Hence, I find that the petitioner is not entitled to be regularized in pursuance of the G.O.Ms. No.212; consequently, no direction be issued to the respondent for regularization of the services of the petitioner, without insisting completion of 5 years of service as on 25.11.1993 and irrespective of for availability of vacancy, with all consequential benefits.

In view of my foregoing discussion, as I find no ground to pass any order in favour of the petitioner, the Writ Petition is liable to be dismissed.

In the result, the Writ Petition is dismissed.

In consequence, miscellaneous petitions, if any, pending in this Writ Petition shall stand dismissed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 20-01-2016.
Dsh

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

27012016

WRIT PETITION No.6027 OF 2001

-
Date.20-01-2016

DSH

[\[1\]](#) 2001 (2) ALT 607

[\[2\]](#) MANU/SC/2113/1998

[\[3\]](#) AIR 1997 SC 3127

[\[4\]](#) 2001 ILLJ 710 SC

[\[5\]](#) AIR 2000 SC 498

[\[6\]](#) AIR 2010 SC 3143